

**STEVE BANH**

VS.

Respondent

AND

Insurance Carrier

## ORDER

## ISSUES

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A preliminary hearing was held in this matter on October 31, 1996. Claimant was the only witness to testify. In addition, medical records and reports were introduced into evidence. The record contains the opinions of three physicians concerning the issue of causation. All three physicians relate claimant's asthma condition, at least in part, to his employment.

Alan Fearey, M.D. has treated claimant since 1986. In his report of April 8, 1996, which is claimant's Exhibit 2 to the preliminary hearing transcript, he describes claimant as having problems with bronchial asthma and paroxysms of cough beginning in 1990. Dr. Fearey states: "It has been my impression that his bronchial asthma and allergic rhinitis have been at least in part related to his work environment. If symptoms are not at least caused by the work environment, I feel indeed that they are exacerbated by the work environment."

Daniel C. Doornbos, M.D., also of the Wichita Clinic, is a fellow of the American College of Chest Physicians. He, along with Dr. Fearey, has been claimant's primary treating physician for his asthma condition. In his report of September 16, 1996, which is claimant's preliminary hearing Exhibit 3, Dr. Doornbos opines that claimant's work "probably has at least some contribution of his asthma, if not a substantial part of it, due to his exposures to paint fumes over the years. . . . I think that there is a very good case indeed that the patient has had worsening of his lung function due to paint exposures; particularly to the isocyanates which are a component of the paints that he was using and which are known sensitizers for asthma."

Dr. Doornbos referred claimant to The National Jewish Center for Immunology and Respiratory Medicine in Denver, Colorado. While there, claimant was evaluated by Ronald Balkisson, M.D., staff physician in the divisions of occupational/environmental medicine and pulmonary medicine. Dr. Balkisson is also an assistant professor at the University of Colorado School of Medicine. His July 11, 1996 report, claimant's Exhibit 1, includes a diagnosis of "steroid-dependent asthma with probable work-relatedness due to isocyanates." Dr. Balkisson also states, "I believe it is highly probable that Mr. Banh has work related asthma. The most likely etiology is isocyanates and less likely cadmium exposure. Mr. Banh should not be returned to the paint shop area or any other areas which may contain isocyanates."

All three of the physicians who gave an opinion concerning causation relate the claimant's condition at least in part to his employment with respondent. The Administrative Law Judge found that "although the Claimant has submitted several documents from physicians, none of the physicians can categorically state that the Claimant's condition is a direct result of his work environment." The Appeals Board finds that such is not the test. All that is required is that the claimant sustain his burden of proving a causal connection between the employment and the occupational disease by a preponderance of the evidence. Expert medical evidence should be expressed to a reasonable probability. For medical benefits to be awarded in cases of occupational asthma it is not the claimant's

burden to prove that such condition was caused solely by the employment or that this must be independent of all other aggravating factors. Accordingly, the Appeals Board finds that claimant has met his burden of proof by a preponderance of the evidence it is more likely than not that his asthma is related to his work conditions.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated October 31, 1996, should be, and is hereby, is reversed and this matter is remanded to the Administrative Law Judge for further proceedings consistent with this Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1996.

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BOARD MEMBER

c: Brian D. Pistonik, Wichita, Kansas  
Frederick L. Haag, Wichita, Kansas  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director